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Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04 – PLR-163280-05

Date:
July 24, 2007

Legend:

Taxpayer =
Date 1 =
Trust =

Date 2 =
Attorney 1 =
Law Firm =
Son =
a =
b =
Company =
Year 1 =
Accountant =

Attorney 2 =
Year 2 =
Attorney 3 =
Year 3 =
Date 3 =
Exempt Trust =

Non-Exempt Trust =

c =

Date 4 =

d =

Date 5 =

Dear _____ :

This is in response to a letter from your authorized representative dated August 9, 2005, and subsequent submissions, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Taxpayer's generation-skipping transfer (GST) exemption to transfers to Trust.

The facts and representations submitted are summarized as follows: In Year 1, on Date 1, Taxpayer established an irrevocable trust (Trust) for the benefit of his lineal descendants and transferred a to the Trust. The trust agreement was drafted by Attorney 1, a partner with Law Firm, who advised Taxpayer and his Son with respect to estate planning matters. Son was appointed Trustee of Trust.

In Year 1, on Date 2, Taxpayer transferred to Trust b shares of stock in Company, a subchapter S corporation. Son, acting under a Durable General Power of Attorney executed by Taxpayer before Year 1, met with Attorney 1, Attorney 2 (counsel for Company), and Accountant, and discussed the need to prepare and file Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for the Year 1 transfers to Trust and the need to allocate a portion of Taxpayer's GST exemption to those transfers. However, a Form 709 was not filed, and GST exemption was not allocated to Trust with respect to the Year 1 transfer.

Subsequently, in Year 2, Attorney 1 asked his partner, Attorney 3, to assist in advising Son and Taxpayer regarding estate planning. In Year 3, Attorney 3 discovered that a gift tax return reporting the Year 1 transfers was not filed, nor was any GST exemption allocated with respect to the transfers.

Accordingly, the Taxpayer took the following corrective action prior to December 31, 2000. First, on Date 3, Son, as Trustee, divided the Trust into an Exempt Trust and a Non-Exempt Trust on a pro rata basis, as authorized under the terms of Trust. A fraction of Trust assets was allocated to Exempt Trust. The numerator of the fraction was the lesser of (i) d and (ii) Taxpayer's actual GST exemption available on Date 3; and the denominator was the value of Trust as of that date (as finally determined for

GST tax purposes). The balance of the Trust's assets was allocated to the Non-Exempt Trust.

Next, on Date 4, Taxpayer filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the Year 1 gift to Trust and allocating Taxpayer's GST exemption to the Exempt Trust, on a Notice of Allocation. The return reported the value of the gift of b shares of Company stock on Date 2 as d. Taxpayer applied his unified credit against the tax, and reported no gift tax due.

Taxpayer died on Date 5. Taxpayer's estate first requests a ruling that the corrective action Taxpayer undertook, specifically the division of Trust into exempt and non-exempt portions and the late allocation of GST exemption, is to be disregarded. Second, the estate requests an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Taxpayer's GST exemption to the Year 1 transfers to Trust of a and of b shares of stock.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the applicable fraction. The "applicable fraction", as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Taxpayer's estate is granted an extension of time of 60 days from the date of this letter to allocate Taxpayer's GST exemption that was available at the time of the transfers in Year 1. The allocation will be effective as of the dates of the respective transfers, and the value of the transfers for gift tax purposes will be used in determining the amount of GST exemption to be allocated with respect to each transfer.

The Date 3 severance of Trust into Exempt Trust and Non-Exempt Trust was valid and effective under state law. The late allocation on Date 3 of Taxpayer's GST exemption is treated as ineffective because, assuming an allocation of Taxpayer's GST exemption is made to Trust pursuant to the relief granted above, the allocation will be deemed timely. Thus, assuming Taxpayer had sufficient available GST exemption and assuming sufficient available GST exemption is allocated with respect to the Year 1 transfers to Trust pursuant to the relief granted herein, and assuming no additional transfers were made to Trust, then immediately prior to the Date 3 severance, Trust will be deemed to have a zero inclusion ratio for GST tax purposes. Consequently, immediately upon Exempt and Non-Exempt Trusts becoming separate trusts on Date 3, Exempt Trust and Non-Exempt Trust will each have a zero inclusion ratio for GST tax purposes.

The allocation should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: